

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4547 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
-

SUSHILABEN RAMANLAL AMIN

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner
MR DN PATEL, AGP for Respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/01/99

ORAL JUDGEMENT

Rule. Mr DN Patel, learned AGP waives service of Rule.

2. By order dated 17.9.1990 (Annexure "A"), the Competent Authority & Deputy Collector, ULC, Ahmedabad held that the petitioner's holding was 2089.20 sq.mtrs. and the permissible holding being 1000 sq.mtrs., the petitioner was holding excess vacant land to the tune of 1089.20 sq.mtrs. The land in survey No. 240 of village Vejalpur admeasuring 1089.20 sq.mtrs. was ordered to be declared as surplus land. The petitioner did not file

any appeal against the said order, but approached the Competent Authority in review contending that the land sought to be declared as surplus land was already constructed upon prior to the date of commencement of the Act and that in case of another co-owner such a finding was given by the Competent Authority and, therefore, the Competent Authority reviewed his order dated 17.9.1990 and passed order dated 16.4.1992 holding that the petitioner did not have any excess holding.

3. The State Government took the aforesaid order dated 16.4.1992 of the Competent Authority in suo motu review under Section 34 of the Act and held that the Competent Authority had no such power of review except for the purpose of correction of arithmetic or similar mistakes. The State Government further observed that if at all the petitioner was aggrieved by the order of the Competent Authority, the petitioner ought to have preferred an appeal before the Urban Land Tribunal. In view of the aforesaid order dated 20.1.1995 (Annexure "D") of the State Government, the petitioner preferred an appeal before the Urban Land Tribunal. The Tribunal dismissed the appeal by its judgment dated 8.3.1997 on the ground that the petitioner's appeal was grossly time barred and that the order dated 17.9.1990 having already been restored by the State Government and the petitioner having not filed any appeal against the order dated 16.4.1992, the Tribunal could not examine the matter on merits. The petitioner filed review application No. 69/97 which also came to be dismissed by the Tribunal by order dated 27.2.1998. It is against the aforesaid orders of the Tribunal that the present petition is filed.

4. The learned counsel for the petitioner submitted that even if the State Government found fault with the order dated 16.4.1992, the State Government ought to have remanded the matter to the Competent Authority or permitted the petitioner to challenge the said order of the Competent Authority in appeal before the Tribunal, as in the case of the co-owner Mrudulaben the Competent Authority had held that the same land was constructed upon prior to the date of commencement of the Act and the State Government had confirmed that order in review.

5. Having heard the learned counsel for the parties, it appears that since the State Government set aside the order dated 16.4.1992 of the Competent Authority mainly on the ground that the Competent Authority had no jurisdiction to review his own order and since the question whether the land in question was open vacant

land or whether construction had already been put up on the said land prior to the commencement of the Act or whether the construction was in accordance with the applicable building regulations are all questions of fact which could be properly decided only after the parties are given full opportunity to lead evidence, it would be just and proper to set aside that part of the order of the State Government by which the State Government held that it was proved that there was no construction on the land in question on the date of the commencement of the Act. It is required to be mentioned that this direction for remand is required to be given in view of the statement made by the learned counsel for the petitioner that in the case of Mrudulaben who is said to be one of the co-owners of the land in question the Competent Authority had held in the order dated 28.2.1991 (Annexure "B" to the petition) in Vejalpur Case No. 1128, (which order was taken by the State Government in review under Section 34 of the Act and was confirmed by the order dated 20.1.1992 in Review Case NO. 12814 (Annexure "B-1" to the petition) that there was construction upon the land in question on the date of commencement of the Act.

6. It is clarified that this Court has not gone into the merits of the controversy whether there was construction on the land in question on the date of commencement of the Act or whether the construction was in accordance with the building bye-laws of the concerned local authority. The matter is remanded with a direction to the Competent Authority to examine the matter afresh without being influenced by any observations made in the order of the State Government in the case of the petitioner or in the case of Mrudulaben.

7. Rule is made absolute to the aforesaid extent only with no order as to costs.

Sd/-

January 25, 1999 (M.S. Shah, J.)

sundar/-